unchallenged evidence of D.W.2 that it would normally take two to three months to assemble such machines in Japan for shipment. I, therefore, find that the defendants have not committed a breach of contract for non-delivery of the machinery. On the contrary, by issuing the notice of action the plaintiffs were, in fact, technically acting in breach of the contract and, to my mind, it was unreasonable for the plaintiffs to terminate the contract and to demand damages on November 5, 1968.

The original stipulation in regard to time having been waived by the plaintiffs, in my view, before taking the present action for breach of contract, the plaintiffs should have given reasonable notice to the defendants requesting delivery within a stated period. Instead, after confirming by letter dated September 23, 1968 that they wanted the type of machines as supplied to Messrs. Foo Ming Plastic, the plaintiffs appeared to have negotiated direct with the Japanese manufacturers leaving the defendants temporarily out of the picture. In my view, Exhibit C11 is insufficient to constitute the requisite notice. The exchange of letters between the plaintiffs and the Japanese manufacturers between October 8 and November 1, 1968 clearly indicates that there was a negotiation between them during this period for the plaintiffs to purchase the machinery direct from the Japanese manufacturers. But, I am satisfied from the evidence that after discovering that the terms of the Japanese offer were less favourable than those in the original contract the proposed contract was never in fact executed. This is unmistakably shown in the translation of Exhibit C15 dated October 30, 1968. On this issue, I do not accept the evidence of the defence witnesses that the plaintiffs had entered into an oral agreement with the Japanese manufacturers some time between 23rd and 27th September, 1968 at Metro Restaurant superceding the original contract between the plaintiffs and the defendants. In my view, there was no novation in this case. There is insufficient evidence to prove that the Japanese manufacturers had agreed either verbally or in writing to take over the legal obligation of the defendant firm. The alleged oral agreement at Metro Restaurant had been vehemently denied by P.W.1 and P.W.2, and as no representative of the Japanese manufacturers had been called to give evidence, by virtue of section 114(g) of the Evidence Ordinance, I would presume that if Mr. Ikushima or his representative had been called he would have given evidence against the defendants. Further, if it were true that the plaintiffs had entered into the alleged new agreement on or about September 23, 1968, why should the plaintiffs on the same date request the defendants by letter to execute the order as contained in Exhibit C11. On the balance of probabilities, I accept the plaintiffs' story that the alleged new agreement was merely a proposal by the Japanese manufacturers which was never accepted.

In the present case, if the plaintiffs had wanted to make time again of the essence of the contract, they should have given the defendants a notice fixing a reasonable time for the shipment and delivery of the machinery. Thus, in *Charles Rickards, Ltd.* v. *Oppenheim*,[4] it was held that where there was an initial stipulation making time of the essence of the contract, the promisee after waiving that initial stipulation was entitled to give a reasonable notice making time of the essence of the matter, whether the contract was for sale of goods or for work and labour. In the present case, the plaintiffs had not given any such notice to make time again the essence of the contract. In the absence of such a notice, I find the present action is misconceived and premature.

For the above reasons, the plaintiffs' claim is dismissed with costs.

Claim dismissed.

Solicitors: *D. A. Devadason; Chew Biman & Co.*

OTHMAN BIN DOL v. PUBLIC PROSECUTOR

[A.Cr.J. (Wan Suleiman J.) July 30, 1971]

[Seremban — Criminal Appeal No. 39 of 1970]

Road Traffic — Admissibility of information given — Road Traffic Ordinance 1958, ss. 36(1), 140A, 141, 146(1)(a).

Road Traffic — Evidence — Standard of proof — Determination of guilt or innocence.

The appellant had been charged with driving a motor taxi without reasonable consideration for other persons using the road. The learned magistrate in calling on him for his defence said that his reason for doing so was because he had admitted having been involved "in the accident". A police officer gave evidence that in the course of investigations the defendant admitted that he was the driver of the motor taxi BT 1621 which was involved in the accident. The learned magistrate in his judgment said: "Having thus weighed the evidence on both sides which was based purely on facts, the court found that on the balance of probability the defence had not thrown sufficient doubt on the prosecution story, so as to warrant acquittal of the defendant".

Held, allowing the appeal: (1) information given under section 141 of the Road Traffic Ordinance is only admissible for the purpose of determining by whom the vehicle was being driven. Any other admission which goes beyond this would be inadmissible;

(2) in this case the admission by the appellant that the motor taxi was involved in the accident was wrongfully admitted in evidence and this wrongful admission had occasioned a failure of justice;

(3) the learned magistrate was wrong in approaching the question of guilt or innocence of the appellant on the basis of the balance of probabilities. What the learned magistrate had to decide was whether the defence had raised a reasonable doubt as to the truth of the prosecution case.

Cases referred to:

(1) *Public Prosecutor* v. *Yuvaraj* [1969] 2 M.L.J. 89, P.C.

(2) *Mohamed Yatim bin Abu Bakar* v. *Public Prosecutor* [1950] M.L.J. 57, 59.

MAGISTRATE'S CRIMINAL APPEAL.

Miss Sinnadurai for the appellant.

Mohamed bin Haji Mohamed Said (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wan Suleiman J.: The appellant Othman bin Dol was charged with driving his motor taxi No. BT 1621 without reasonable consideration for other persons

using the road, an offence under section 36(1) and punishable under section 146(1)(a) of the Road Traffic Ordinance, 1958. The offence was alleged to have been committed at approximately 2.45 p.m. on 2nd August, 1969 at the 16¾ milestone Seremban/Tampin Road, Rembau. He was convicted and fined $150 in default one month's imprisonment, and his driving licence was ordered to be endorsed.

PW 1 Saerah binti Karim did not claim that she could identify the motor vehicle which had knocked her down, nor was she invited to say whether the appellant's taxi, photographs of which were produced at the trial, was the offending vehicle.

Sergeant 1100 who went to investigate, was accompanied to the spot by the appellant who had lodged a report which for reasons not given, had not been produced. There on the right side of the road facing Tampin he saw motor taxi BT 1621, facing Seremban and tyre marks. This witness said (and I quote his very words) "In the course of investigations defendant admitted driving motor taxi BT 1621 which was involved in the accident."

In calling upon the appellant to make his defence the learned magistrate made it clear in his judgment that his reason for connecting the appellant with this offence was because he had "admitted having been involved" in the accident.

The admission of this bit of evidence gave rise to the first ground of appeal. It has been urged upon me that section 141 of the Road Traffic Ordinance, 1958 merely makes appellant's admission that he was the driver at or about the time of the alleged offence admissible but not any admission that he had been involved in the accident, if by this is meant, that he had knocked down the first witness with his motor taxi.

I therefore propose to examine the whole of section 141.

Where the driver of a motor vehicle is alleged or is suspected to be guilty of an offence in connection with the driving of the motor vehicle (as in the instant case), the owner of the vehicle may be required by a police officer or road transport officer under sub-section (1)(a) thereof within seven days to give information as to the identity, address and as to the licence/licences of the person *who was driving the vehicle at or about the time of the alleged offence.*

Under sub-section (1)(b) any other person (and clearly this includes the driver himself) who was or should have been in charge of the vehicle may likewise be required to give "any information which it is in his power to give, and which may lead to the identification of the driver" *i.e.* the person who was driving the vehicle at or about the time of the alleged offence.

Sub-section (2) makes "any information given under this section" admissible in evidence despite the provisions for instance of the Evidence Ordinance, the Criminal Procedure Code and any other written law, to the contrary, even if such information is given by the driver himself. It is clear that such information to be admissible must have been made under section 141, and in the instant case, could only have been made after being so required to do under section 141(1)(b), *i.e.* after such information has been required by a police officer or a road transport officer. It must be confined to the sort of information which can statutorily be required.

It seems to me that to make sense, the statements referred to in sub-section (3) cannot refer to information supplied under request in accordance with sub-section (1). The statements therefore must be those either volunteered by any person or recorded by any police officer under the powers given to him by section 140A of the Ordinance. In the latter case, tne proviso to section 112 (ii) of the Criminal Procedure Code would apply, so that a driver if interrogated under sub-section (3) may lawfully refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge, penalty or forfeiture. This would, I think make it lawful for him to refuse to answer any question which would indicate that he was the driver of the vehicle "on a particular occasion", which words appear to me to mean "at or about the time the alleged offence" had occurred. However should he nevertheless make a statement that he was indeed the driver at or about such time and place, the sub-section makes this statement admissible in evidence, but only "for the purpose of determining by whom the vehicle was being driven...." Therefore any other admission which goes beyond that would be inadmissible. Where the statement is to the effect that "defendant admitted driving motor taxi BT 1621 which was involved in the accident", the effect is not merely to enable the court to determine who had driven the vehicle on a particular occasion, but also to imply that the maker of the statement admitted to in this particular case, knocking down the first prosecution witness. This ingredient of the offence must be proved by other means, and its wrongful admission in this case has occasioned a failure of justice.

The decision of the learned magistrate was attacked on another ground. It would appear from his judgment that he has approached the question of the guilt or innocence of the appellant on the basis of the balance of probabilities. I quote from the last paragraph of his judgment:—

"Having thus weighed the evidence on both sides, which was based purely on facts, the court found that on the balance of probability the defence had not thrown sufficient doubt on the prosecution story, so as to warrant acquittal of the defendant."

This approach would only be correct if the charge had been for an offence under Part V of the Ordinance, so that the presumption under section 144 would become operative. (See *Public Prosecutor* v. *Yuvaraj*[1])

The appellant was charged for an offence under section 36(1), which comes under Part II of the Ordinance, so that what the learned magistrate had to decide was whether the defence had raised a reasonable doubt as to the truth of the prosecution case. It would be pertinent to repeat the words of Spenser Wilkinson J. in *Mohamed Yatin bin Abu Bakar* v. *Public Prosecutor*[2]: —

"In an ordinary case, where no special burden of proof or explanation is by law cast upon the accused, his position is more favourable than it is in those cases where the law presumes something against him. The principle laid down in the recent English cases, particularly *Mancini* v. *Director of Public Prosecutions* ([1942] A.C. 1) appears to me to be that, where no special onus is cast by law upon the accused, then, if his story has the effect of raising a reasonable doubt as to the truth of the prosecution case, he is entitled to an acquittal;"

I would therefore allow this appeal. The appellant is acquitted and discharged, and the order of endorsement of his driving licence is set aside.

Appeal allowed.

Solicitors: *Lovelace & Hastings.*

YEOH PANG KWAN v. WILLIAM JANZ

[A.C.J. (Wan Suleiman J.) August 27, 1971]

[Alor Star — Civil Appeal No. 6 of 1968]

Landlord and Tenant — Lease — Surrender of — Arrears of rent — Parol lease of less than one year — No provision as regards length of notice required to terminate — Application of common law principles — Reasonable notice — Land Enactment No. 56 (Kedah) s. 94 — Civil Law Ordinance, 1956, s. 3(1).

This was an appeal against the judgment of the sessions court which ordered the appellant to pay arrears of rent and to surrender the land occupied by him to the respondent. It appeared that no notice to quit had been given by the respondent.

Held: the tenancy in this case was a parol lease for a term not exceeding one year and a reasonable notice to quit would be a month's notice. As no such notice had been given, the tenancy had been unlawfully terminated and therefore the respondent was not entitled to an order for possession of the land.

Cases referred to:-

(1) *Harnam Singh* v. *Ho Seng* [1935] M.L.J. 15.

(2) *Simmons* v. *Crossley* [1922] 2 K.B. 95, 107.

CIVIL APPEAL.

Ooi Gin Sun for the appellant.

Respondent in person.

Wan Suleiman J.: The respondent/plaintiff at material times was the owner of a piece of land under Land Grant No. 19455 at Bakar Arang, Sungei Patani, and the appellant/defendant was the tenant on the land. According to the respondent this house was built by appellant's father in 1950 so that even if the respondent had claimed, which he had not, that this house was permanently attached to the land and therefore belongs to him, there is no question at all of the premises being controlled premises under the Control of Rent Ordinance, 1956.

According to the respondent the appellant had paid ground rent at $10 per month for two months in 1966, and to support his claim he produced Exhibits P1[A] and P1[B] in the court below.

The appellant claimed at first that ground rent was $3 monthly, but he eventually admitted paying the increased rent on two occasions though he did say that he had paid $12 and not $10 on each occasion. I think it will be safe to assume from this that the tenancy agreement had been amended in respect of rent by mutual consent.

Though the respondent averred in his statement of claim that he had served the appellant with a notice to settle and deliver up vacant possession, whatever that may mean, it is clear from his testimony in the court below and his admission during the hearing of the appeal that he had not served upon the appellant a notice to quit.

It appears to me that this tenancy is a parol lease for a term not exceeding one year of the sort contemplated by section 94 of the Land Enactment No. 56 of Kedah, the land law applicable to this action. No provision having been made either in the Enactment or by any other written law in force in Malaysia as regards the length of notice required to determine this lease, the common law of England would apply in accordance with section 3(1) of the Civil Law Ordinance, 1956.

In *Woodfall's* Landlord and Tenant, 26th Ed. vol. 1 at paragraph 734 appears the following passage:-

"A demise of houses or of rooms at a monthly or weekly rent affords a presumption of a monthly or weekly tenancy,"

and further down the same paragraph —

"The proper notice unless the parties agree otherwise is a month's or a week's notice, as the case may be, expiring at the end of the current period of the tenancy."

In my opinion the presumption would also apply where the tenancy is in respect of land only.

In any event following Thomas C.J. in *Harnam Singh* v. *Ho Seng*,[1] wherein he cited with approval the judgment of Swift J. in *Simmons* v. *Crossley*,[2] notice in the case of a monthly tenancy must be reasonable according to the facts of the case. Taking into account the circumstances surrounding this tenancy I would say that a month's notice is reasonable.

Failure to give such notice therefore means that the tenancy had been unlawfully terminated. Therefore whilst I uphold the decision of the learned president as regards the order to pay arrears of rent, I set aside the order requiring appellant to surrender that part of the land occupied by him to respondent.

Order accordingly.

Solicitors: *Ooi Gin Sun & Co.*